

Information Commissioner's Office

# Consultation:

## Age Appropriate Design code

Start date: 15 April 2019

End date: 31 May 2019

# Introduction

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The Information Commissioner is seeking feedback on her draft code of practice [Age appropriate design](#) - a code of practice for online services likely to be accessed by children (the code).

The code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet.

The code is now out for public consultation and will remain open until 31 May 2019. The Information Commissioner welcomes feedback on the specific questions set out below.

Please send us your comments by 31 May 2019.

**Download this document and email to:**

[ageappropriatedesign@ico.org.uk](mailto:ageappropriatedesign@ico.org.uk)

**Print off this document and post to:**

Age Appropriate Design code consultation  
Policy Engagement Department  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

If you would like further information on the consultation please telephone 0303 123 1113 and ask to speak to the Policy Engagement Department about the Age Appropriate Design code or email [ageappropriatedesign@ico.org.uk](mailto:ageappropriatedesign@ico.org.uk)

## Privacy statement

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public or a parent). All responses from organisations and individuals responding in a professional capacity (e.g. academics, child development experts, sole traders, child minders, education professionals) will be published. We will remove email addresses and telephone numbers from these responses but apart from this, we will publish them in full.

For more information about what we do with personal data, please see our [privacy notice](#).

## Section 1: Your views

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**Q1.** Is the '**About this code**' section of the code clearly communicated?

Yes

If NO, then please provide your reasons for this view.

**Q2.** Is the '**Services covered by this code**' section of the code clearly communicated?

Yes

If NO, then please provide your reasons for this view.

## Standards of age-appropriate design

Please provide your views on the sections of the code covering each of the 16 draft standards

**1. Best interests of the child:** The best interests of the child should be a primary consideration when you design and develop online services likely to be accessed by a child.

**2. Age-appropriate application:** Consider the age range of your audience and the needs of children of different ages. Apply the standards in this code to all users, unless you have robust age-verification mechanisms to distinguish adults from children.

**3. Transparency:** The privacy information you provide to users, and other published terms, policies and community standards, must be concise, prominent and in clear language suited to the age of the child. Provide additional specific 'bite-sized' explanations about how you use personal data at the point that use is activated.

**4. Detrimental use of data:** Do not use children's personal data in ways that have been shown to be detrimental to their wellbeing, or that go against industry codes of practice, other regulatory provisions or Government advice.

**5. Policies and community standards:** Uphold your own published terms, policies and community standards (including but not limited to privacy policies, age restriction, behaviour rules and content policies).

**6. Default settings:** Settings must be 'high privacy' by default (unless you can demonstrate a compelling reason for a different default setting, taking account of the best interests of the child).

**7. Data minimisation:** Collect and retain only the minimum amount of personal data necessary to provide the elements of your service in which a child is actively and knowingly engaged. Give children separate choices over which elements they wish to activate.

**8. Data sharing:** Do not disclose children's data unless you can demonstrate a compelling reason to do so, taking account of the best interests of the child.

**9. Geolocation:** Switch geolocation options off by default (unless you can demonstrate a compelling reason for geolocation, taking account of the best interests of the child), and provide an obvious sign for children when location tracking is active. Options which make a child's location visible to others must default back to off at the end of each session.

**10. Parental controls:** If you provide parental controls give the child age appropriate information about this. If your online service allows a parent or carer to monitor their child's online activity or track their location, provide an obvious sign to the child when they are being monitored.

**11. Profiling:** Switch options based on profiling off by default (unless you can demonstrate a compelling reason for profiling, taking account of the best interests of the child). Only allow profiling if you have appropriate measures in place to protect the child from any harmful effects (in particular, being fed content that is detrimental to their health or wellbeing).

**12. Nudge techniques:** Do not use nudge techniques to lead or encourage children to provide unnecessary personal data, weaken or turn off privacy protections, or extend use.

**13. Connected toys and devices:** If you provide a connected toy or device ensure you include effective tools to enable compliance with this code

**14. Online tools:** Provide prominent and accessible tools to help children exercise their data protection rights and report concerns.

**15. Data protection impact assessments:** Undertake a DPIA specifically to assess and mitigate risks to children who are likely to access your service, taking into account differing ages, capacities and development needs. Ensure that your DPIA builds in compliance with this code.

**16. Governance and accountability:** Ensure you have policies and procedures in place which demonstrate how you comply with data protection obligations, including data protection training for all staff involved in the design and development of online services likely to be accessed by children. Ensure that your policies, procedures and terms of service demonstrate compliance with the provisions of this code

**Q3.** Have we communicated our expectations for this standard clearly?

<b>1. Best interests of the child</b>
No  There is a great deal of uncertainty when the standard seems to say that the best interests of the child are what's best for each individual child. But also weighing between two competing best interests, pick the best one. The definition of a standard is a norm or measure in comparative evaluations. "Best interests of the child" do not meet this basic test.
<b>2. Age-appropriate application</b>
No  The discussion of more "robust" age verification tools does not provide adequate guidance.
<b>3. Transparency</b>
No  The industry is still not clear on how to meet the GDPR standard for communicating some of the complex uses of data to children--and this standard must assume at least literate children. There isn't consensus around iconography at this time.
<b>4. Detrimental use of data</b>
Yes  Additional comments below.
<b>5. Policies and community standards</b>
Yes  Additional comments below.
<b>6. Default settings</b>
Yes  Additional comments below.
<b>7. Data minimisation</b>
No  As a general principle, like with GDPR, data minimization makes sense. However, we are confused as to how to provide children with choices over what they wish to activate.
<b>8. Data sharing</b>
Yes  Additional comments below
<b>9. Geolocation</b>

No
Unclear whether the definition includes geofencing to respect rights and deliver proper translations.
<b>10. Parental controls</b>
No
Shouldn't parents ultimately control the use of technology by their (minor) children?
<b>11. Profiling</b>
No
Unclear on the scope of profile data here - does this include play analytics for game tuning?
<b>12. Nudge techniques</b>
No
Not clear if nudge techniques also include "fun" activities that are "sticky" but may inspire players to purchase in app purchases to boost play.
<b>13. Connected toys and devices</b>
Yes
If NO, then please provide your reasons for this view.
<b>14. Online tools</b>
Yes
Additional comments below.
<b>15. Data protection impact assessments</b>
Yes
Additional comments below.
<b>16. Governance and accountability</b>
Yes
If NO, then please provide your reasons for this view.

**Q4.** Do you have any examples that you think could be used to illustrate the approach we are advocating for this standard?

<b>1. Best interests of the child</b>
No

If YES, then please provide details.

## **2. Age-appropriate application**

No

If YES, then please provide details.

## **3. Transparency**

No

If YES, then please provide details.

## **4. Detrimental use of data**

No

If YES, then please provide details.

## **5. Policies and community standards**

No

If YES, then please provide details.

## **6. Default settings:**

No

If YES, then please provide details.

## **7. Data minimisation**

No

If YES, then please provide details.

## **8. Data sharing**

No

If YES, then please provide details.

## **9. Geolocation**

No

If YES, then please provide details.

## **10. Parental controls**

No

If YES, then please provide details.

## **11. Profiling**

No

If YES, then please provide details.

## **12. Nudge techniques**



No

If YES, then please provide details.

**13. Connected toys and devices**

No

If YES, then please provide details.

**14. Online tools**

No

If YES, then please provide details.

**15. Data protection impact assessments**

No

If YES, then please provide details.

**16. Governance and accountability**

No

If YES, then please provide details.

**Q5.** Do you think this standard gives rise to any unwarranted or unintended consequences?

**1. Best interests of the child**

Yes

As noted above, a standard must be a reliable measure for comparison, and here, that measuring index is not fixed but based on each individual. We are concerned that this broad, unclear mandate will have a chilling effect on the entire industry--especially in light of the reach into experiences not intended or designed for kids. We are also concerned that defining children as under 18 for purposes of data collection is out of step with the rest of Europe, the GDPR and the standards we've been adjusting to not a very long time ago. Digital experiences are designed for global audiences. Not unlike with many news outlets and organizations in the US who, under the GDPR stopped publishing in Europe, we believe that one of the consequences is that publishers will opt not to publish entertainment experiences in the UK as the risk and expense is too high.

## **2. Age-appropriate application**

Yes

Designing for such a wide range of players is difficult and when not done just right, may turn away players who will feel the experience is not made for them.

How are the "robust" age verification systems supposed to work? COPPA requires verifiable parental consent when an under 13's data is collected, but this is rarely implemented as it is too expensive to operate. Further, COPPA offers an exception when the collection is limited to alpha-numeric identifiers for purposes of support of internal operations. This is a workable compromise. There is still a lot of suspicion from consumers that age gates are collecting information when they are really trying to provide an appropriate level of experience. The fact is that age gates still cause some level of player drop by their mere existence.

What is the consequence of players who play over a period of time and age up? One irony is that the industry will need to track age over time of the player-base, whereas now we do not.

## **3. Transparency**

Yes

See feasibility question below.

## **4. Detrimental use of data**

Yes

This is another area that could likely cause a chilling effect. We believe that beyond obviously detrimental uses of data, like exposing personally identifiable information without consent or publicly, that the standard as written goes beyond data use. The paragraphs on "Strategies to extend user engagement" do not deal with data, personal or otherwise, and are not well researched enough to provide adequate guidance. Where is the line between fun and sticky? Although we believe that there may be room for improvement--such improvement might better come through targeted recommendations or regulation of things like loot boxes. What concerns us is whether this bleeds over into more general practices of making mastery and play fun, even if this may be monetized. Again, if there's not a clearer line here and a solid research foundation for where that line is drawn, to implement this to include the user engagement strategies without being more narrowly tailored is to invite publishers to pull their experiences from the UK market out of cost and liability concerns.

## **5. Policies and community standards**

No

If YES, then please provide your reasons for this view.

## **6. Default settings**

Yes

More to say on the feasibility of this standard, but for now, the issue with unintended consequences is that as a result of allowing children to change default settings as suggested, a publisher who implements these without verifiable parental consent runs the risk of violating COPPA in the US. Further, this feature could unintentionally invite MORE collection than would otherwise be necessary for a child-directed or general audience experience in order to implement. Finally, regular users who get their settings routinely set back to default will get frustrated by the experience and quit playing your game or visiting your website--especially if there's a perceived loss of game progress as a result.

## **7. Data minimisation**

Yes

Giving children choices over which data elements they wish to enable is confusing and may be counter productive. This does not seem to be well thought through.

## **8. Data sharing**

Yes

Data remediation for the cohort of users who are 16 or 17 could take away features these users already feel they have a right to and create potential claims of deceptive practices.

## **9. Geolocation**

Yes

Some privacy features rely on being able to geofence by country. Please carve out such an exception for legitimate features that use gross IP address/location to determine country will become a liability when they've been designed to tailor an experience for a global audience. No issue with precise location being off limits without adequate consent.

## **10. Parental controls**

Yes

This seems counter intuitive. Parental controls are one of the few safeguards that parents have to use the ubiquitous technology kids have access to.

## **11. Profiling**

Yes

For the use case of a family device, or shared computer, switching this to default every time is counter productive. In these cases, user accounts are used to precisely to avoid serving inappropriate (or just irrelevant) content to users. The example screen shots do not really seem to speak to most children or their understanding and will become frustrating nuisances to the user experience.

<b>12. Nudge techniques</b>
Yes
We are concerned that the concept of "extend their use" is too broad and may cover a fun game that also offers in-app purchases to enhance game play. We believe that the OFT guidelines provided a better test around not putting undo pressure around purchases. Reward loops, taken broadly, get into the core of the entire mobile gaming industry and would be a radical redesign with tremendous economic shocks for the industry.
<b>13. Connected toys and devices</b>
No
If YES, then please provide your reasons for this view.
<b>14. Online tools</b>
Yes
We struggle with the concept of giving children consent for some questions that may not be appropriate or valid for purposes of consent in other jurisdictions (e.g., in the US children cannot consent to a legal agreement, etc.).
<b>15. Data protection impact assessments</b>
No
If YES, then please provide your reasons for this view.
<b>16. Governance and accountability</b>
No
If YES, then please provide your reasons for this view.

**Q6.** Do you envisage any feasibility challenges to online services delivering this standard?

<b>1. Best interests of the child</b>
Yes
Please refer to the concerns expressed in question 5.
<b>2. Age-appropriate application</b>
Yes
The manifold layers of age-grade maintenance requires a lot of initial re-architecting and further ongoing support. Users may have to be aged-up automatically, for instance. In general, adding other general new features or content will become that much more expensive and time consuming as all will be adjusted to the multiple layers of age.
<b>3. Transparency</b>

Yes

We believe the industry is still struggling to understand how to explain some of the complex concepts that underlie data collection in the digital entertainment environment under GDPR. Ad tech is complicated and not a lot of adults understand it.

#### **4. Detrimental use of data**

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

#### **5. Policies and community standards**

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

#### **6. Default settings**

Yes

This standard seems particularly challenging to implement. This will require a lot of mass UX testing to even get functional and it will potentially get deep into the architecture of mobile games and be quite expensive to implement.

#### **7. Data minimisation**

Yes

Giving different age users different choices over which elements to activate is a potentially confusing experience for users and one that, at least for mobile games would get extremely into the weeds and be quite expensive and difficult to implement. There are unforeseen relationships between each data element that users may not understand which in turn will lead to frustration.

#### **8. Data sharing**

Yes

There will be a challenge in remediating existing data for the users between 16 and 18. These users may have long relied on expectations of operation and in removing some of this data, the consequence could be removing access to features these users have come to expect.

#### **9. Geolocation**

No

If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

#### **10. Parental controls**

Yes
Implementing features to alert users when parental monitoring is happening would seem to require a great deal more data monitoring and connectivity than is currently the case.
<b>11. Profiling</b>
Yes
Building such profiling systems will be a huge lift across our entire portfolio of web and mobile services--we do not profile for OBA so creating switch options for this purpose would be of little return on considerable investment.
<b>12. Nudge techniques</b>
Yes
We believe that the OFT guidelines provided a better test around not putting undo pressure around purchases. Reward loops, taken broadly, get into the core of the entire mobile gaming industry and would be a radical redesign with tremendous economic shocks for the industry.
<b>13. Connected toys and devices</b>
Yes
Our challenge with smart speakers is that unlike web or mobile, as publishers and content creators, we are unable to know what the platform collects or how it handles privacy decisions that we would take care of to ensure compliance from a design perspective. We do not have that comfort now either.
<b>14. Online tools</b>
Yes
This is a huge lift from an engineering point of view. This could take years to fully test and implement.
<b>15. Data protection impact assessments</b>
No
If YES, then please provide details of what you think the challenges are and how you think they could be overcome.
<b>16. Governance and accountability</b>
No
If YES, then please provide details of what you think the challenges are and how you think they could be overcome.

**Q7.** Do you think this standard requires a transition period of any longer than 3 months after the code come into force?

## **1. Best interests of the child**

YES/NO.

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

## **2. Age-appropriate application**

Yes

Doing this is a years-long development process that really must be on a go-forward basis.

## **3. Transparency**

Yes

to the extent we must now track age and profile across time, this will be a big lift to implement taking much longer than 3 months.

## **4. Detrimental use of data**

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

## **5. Policies and community standards**

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

## **6. Default settings**

Yes

Doing this is a years-long development process that really must be on a go-forward basis. For mobile this requires a complete re-architecture of the game loop with the addition of several more states to manage. There will be a lot of bugs from the unforeseen interconnections between data elements and settings.

## **7. Data minimisation**

No

If YES, then please provide your reasons for this view, and give an

indication of what you think a reasonable transition period would be and why.

#### **8. Data sharing**

Yes

For reasons stated above, it will be particularly difficult to remediate users who are 16 or 17. This may take a lot of testing to ensure that their experience isn't broken.

#### **9. Geolocation**

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

#### **10. Parental controls**

Yes

We do not yet know how such controls would be implemented as there isn't much precedence for this. Will need testing and bug fixing after implementation (which isn't clear how this will work).

#### **11. Profiling**

Yes

If profiling includes creating new cohorts of users based on age, and if profiling includes collection of analytics for purposes of game play analysis, tuning and debugging, doing this is a years-long development process that really must be on a go-forward basis.

#### **12. Nudge techniques**

Yes

If the requirement is to fundamentally upturn the free play for ad-tech model of mobile or web games and entertainment, this will take far longer than 3 months to evolve.

#### **13. Connected toys and devices**

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

#### **14. Online tools**

Yes

This is completely impracticable within 3 months. This could be a whole startup industry model--but the industry and tools don't exist.



**15. Data protection impact assessments**

Yes

DPIAs take longer than 3 months to prepare. If the requirement will be to add a large number of existing experiences that are currently "adult directed" to this analysis, that will be a big lift.

**16. Governance and accountability**

No

If YES, then please provide your reasons for this view, and give an indication of what you think a reasonable transition period would be and why.

**Q8.** Do you know of any online resources that you think could be usefully linked to from this section of the code?

**1. Best interests of the child**

YES/NO.

If YES, then please provide details (including links).

**2. Age-appropriate application**

YES/NO.

If YES, then please provide details (including links).

**3. Transparency**

YES/NO.

If YES, then please provide details (including links).

**4. Detrimental use of data**

YES/NO.

If YES, then please provide details (including links).

**5. Policies and community standards**

YES/NO.

If YES, then please provide details (including links).

**6. Default settings**

YES/NO.
If YES, then please provide details (including links).
<b>7. Data minimisation</b>
YES/NO.
If YES, then please provide details (including links).
<b>8. Data sharing</b>
YES/NO.
If YES, then please provide details (including links).
<b>9. Geolocation</b>
YES/NO.
If YES, then please provide details (including links).
<b>10. Parental controls</b>
YES/NO.
If YES, then please provide details (including links).
<b>11. Profiling</b>
YES/NO.
If YES, then please provide details (including links).
<b>12. Nudge techniques</b>
Yes
If YES, then please provide details (including links).
<b>13. Connected toys and devices</b>
No
If YES, then please provide details (including links).
<b>14. Online tools</b>
YES/NO.
If YES, then please provide details (including links).
<b>15. Data protection impact assessments</b>
YES/NO.
If YES, then please provide details (including links).
<b>16. Governance and accountability</b>
YES/NO.
If YES, then please provide details (including links).

**Q10.** Is the '**Enforcement of this code**' section clearly communicated?

YES/NO.

If NO, then please provide your reasons for this view.

**Q11.** Is the '**Glossary**' section of the code clearly communicated?

YES/NO.

If NO, then please provide your reasons for this view.

**Q12.** Are there any key terms missing from the '**Glossary**' section?

YES/NO.

If YES, then please provide your reasons for this view.

**Q13.** Is the '**Annex A: Age and developmental stages**' section of the code clearly communicated?

YES/NO.

If NO, then please provide your reasons for this view.

**Q14.** Is there any information you think needs to be changed in the '**Annex A: Age and developmental stages**' section of the code?

YES/NO.

If YES, then please provide your reasons for this view.

**Q15.** Do you know of any online resources that you think could be usefully linked to from **the 'Annex A: Age and developmental stages'** section of the code?

YES/NO.

If YES, then please provide details (including links).

**Q16.** Is the '**Annex B: Lawful basis for processing**' section of the code clearly communicated?

YES/NO.

If NO, then please provide your reasons for this view.

**Q17.** Is this '**Annex C: Data Protection Impact Assessments**' section of the code clearly communicated?

YES/NO.

If NO, then please provide your reasons for this view.

**Q18.** Do you think any issues raised by the code would benefit from further (post publication) work, research or innovation?

YES/NO.

If YES, then please provide details (including links).

## Section 2: About you

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**Are you:**

A body representing the views or interests of children? Please specify:	<input type="checkbox"/>
A body representing the views or interests of parents? Please specify:	<input type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
An Academic? Please specify:	<input type="checkbox"/>
An individual acting in another professional capacity? Please specify:	<input type="checkbox"/>

<p>A provider of an ISS likely to be accessed by children?</p> <p>Please specify:</p> <p>Toy and Entertainment Company</p>	<input checked="" type="checkbox"/>
<p>A trade association representing ISS providers?</p> <p>Please specify:</p>	<input type="checkbox"/>
<p>An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public or a parent)?</p>	<input type="checkbox"/>
<p>An ICO employee?</p>	<input type="checkbox"/>
<p>Other?</p> <p>Please specify:</p>	<input type="checkbox"/>

**Thank you for responding to this consultation.**

**We value your input.**